

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Margett

February 26, 1997

An act to amend Sections 7090, 7137, 7152, 7155.5, 7156, 7157, and 7159 of, and to repeal Sections 7153, 7153.1, 7153.2, 7153.3, 7154, and 7155 of, the Business and Professions Code, relating to home improvement salespersons.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as introduced, Margett. Home improvement salespersons.

Under the Contractors' State License Law, hereafter "license law," it is unlawful for a person to engage in the occupation of salesperson for a home improvement contractor without having a registration issued by the registrar of contractors unless specifically exempted. The license law establishes procedures for registration and renewal of registration for home improvement salespersons. A home improvement salesperson is subject to disciplinary action by the registrar for violation of these provisions. In addition, a home improvement contractor who employs an unregistered person to sell home improvement contracts is subject to disciplinary action by the registrar.

This bill would repeal the requirement of registration for home improvement salespersons, as well as provisions imposing criminal liability and disciplinary action on home improvement salespersons and home improvement

contractors who employ unregistered home improvement salespersons.

The bill would also make related and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7090 of the Business and
2 Professions Code is amended to read:

3 7090. The registrar may upon his or her own motion
4 and shall upon the verified complaint in writing of any
5 person, investigate the actions of any applicant, *or*
6 contractor, ~~or home improvement salesperson~~ within the
7 state and may deny the licensure or the renewal of
8 licensure of, or cite, temporarily suspend, or permanently
9 revoke any license or registration if the applicant,
10 licensee, or registrant, is guilty of or commits any one or
11 more of the acts or omissions constituting causes for
12 disciplinary action.

13 The registrar may proceed to take disciplinary action
14 as in this article provided against an applicant or a person
15 licensed or registered under the provisions of this chapter
16 even though the grounds or cause for ~~such~~ *the*
17 disciplinary action arose upon projects or while the
18 applicant, licensee, or registrant was acting in a capacity
19 or under circumstances or facts which, under the
20 provisions of Sections 7044, 7045, 7046, and 7048, would
21 otherwise exempt the person or his or her operations
22 from the provisions of this chapter.

23 Notwithstanding any provision of this chapter, if the
24 registrar finds that any contractor licensed or registered
25 under the provisions of this chapter has willfully and
26 deliberately violated any state or local law relating to the
27 issuance of building permits, other than failure to obtain
28 a county or city permit for repair, maintenance, and
29 adjustment of equipment where ~~such~~ *the* repair,
30 maintenance, or adjustment is valued at less than five
31 hundred dollars (\$500) for labor or materials, or where
32 the repair of a part or component part of mechanical



1 equipment consists of replacing ~~such~~ *the* part or
2 component part of mechanical equipment in need of
3 repair with the identical part or component part, the
4 registrar shall suspend or revoke the contractor's license.

5 For the purpose of this section, there ~~shall be~~ *is* a
6 rebuttable presumption affecting the burden of proof
7 that construction performed without a permit is a willful
8 and deliberate violation.

9 SEC. 2. Section 7137 of the Business and Professions
10 Code is amended to read:

11 7137. The amount of the fees prescribed by this
12 chapter shall be fixed by the board according to the
13 following schedule:

14 (a) The application fee for an original license in a
15 single classification shall be two hundred fifty dollars
16 (\$250).

17 The application fee for each additional classification
18 applied for in connection with an original license shall be
19 fifty dollars (\$50).

20 The application fee for each additional classification
21 pursuant to Section 7059 shall be fifty dollars (\$50).

22 The application fee to replace a responsible managing
23 officer or employee pursuant to Section 7068.2 shall be
24 fifty dollars (\$50).

25 (b) The fee for rescheduling an examination for an
26 applicant who has applied for an original license,
27 additional classification, a change of responsible
28 managing officer or responsible managing employee, or
29 for an asbestos certification or hazardous substance
30 removal certification, shall be fifty dollars (\$50).

31 (c) The initial license fee for an active or inactive
32 license shall be one hundred fifty dollars (\$150).

33 (d) The renewal fee for an active license shall be three
34 hundred dollars (\$300).

35 The renewal fee for an inactive license shall be one
36 hundred fifty dollars (\$150).

37 (e) The delinquency fee is an amount equal to 50
38 percent of the renewal fee, but not more than twenty-five
39 dollars (\$25).

1 ~~(f) The registration fee for a home improvement~~
2 ~~salesperson shall be fifty dollars (\$50).~~

3 ~~(g) The renewal fee for a home improvement~~
4 ~~salesperson registration shall be seventy-five dollars~~
5 ~~(\$75).~~

6 ~~(h) The application fee for an asbestos certification~~
7 ~~examination shall be fifty dollars (\$50).~~

8 ~~(i)~~

9 (g) The application fee for a hazardous substance
10 removal or remedial action certification examination
11 shall be fifty dollars (\$50).

12 SEC. 3. Section 7152 of the Business and Professions
13 Code is amended to read:

14 7152. ~~(a)~~ “Home improvement salesperson” is a
15 person employed by a home improvement contractor
16 licensed under this chapter to solicit, sell, negotiate, or
17 execute contracts for home improvements, for the sale,
18 installation or furnishing of home improvement goods or
19 services, or of swimming pools, spas, or hot tubs.

20 ~~(b) The following shall not be required to be~~
21 ~~registered as home improvement salespersons:~~

22 ~~(1) An officer of record of a corporation licensed~~
23 ~~pursuant to this chapter.~~

24 ~~(2) A qualifying person, as defined in Section 7068.~~

25 ~~(3) A salesperson whose sales are all made pursuant to~~
26 ~~negotiations between the parties if the negotiations are~~
27 ~~initiated by the prospective buyer at or with a general~~
28 ~~merchandise retail establishment that operates from a~~
29 ~~fixed location where goods or services are offered for sale.~~

30 ~~(4) A person who contacts the prospective buyer for~~
31 ~~the exclusive purpose of scheduling appointments for a~~
32 ~~registered home improvement salesperson.~~

33 ~~(5) A bona fide service repairperson who is in the~~
34 ~~employ of a licensed contractor and whose repair or~~
35 ~~service call is limited to the service, repair, or emergency~~
36 ~~repair initially requested by the buyer of the service.~~

37 SEC. 4. Section 7153 of the Business and Professions
38 Code is repealed.

39 ~~7153. (a) It is a misdemeanor for any person to~~
40 ~~engage in the occupation of salesperson for one or more~~

1 ~~home improvement contractors within this state without~~
2 ~~having a registration issued by the registrar for each of the~~
3 ~~home improvement contractors by whom he or she is~~
4 ~~employed as a home improvement salesperson.~~

5 ~~It is a misdemeanor for any person to engage in the~~
6 ~~occupation of salesperson of home improvement goods or~~
7 ~~services within this state without having a registration~~
8 ~~issued by the registrar.~~

9 ~~(b) Any security interest taken by a contractor, to~~
10 ~~secure any payment for the performance of any act or~~
11 ~~conduct described in Section 7151 that occurs on or after~~
12 ~~January 1, 1995, is unenforceable if the person soliciting~~
13 ~~the act or contract was not a duly registered salesperson~~
14 ~~or was not exempt from registration pursuant to Section~~
15 ~~7152 at the time the homeowner signs the home~~
16 ~~improvement contract solicited by the salesperson.~~

17 SEC. 5. Section 7153.1 of the Business and Professions
18 Code is repealed.

19 ~~7153.1. The home improvement salesman shall~~
20 ~~submit to the registrar an application in writing~~
21 ~~containing the statement that he desires the issuance of~~
22 ~~a registration under the terms of this article.~~

23 ~~The application shall be made on a form prescribed by~~
24 ~~the registrar and shall be accompanied by the fee fixed by~~
25 ~~this chapter.~~

26 ~~The registrar may refuse to register the applicant~~
27 ~~under the grounds specified in Section 480.~~

28 SEC. 6. Section 7153.2 of the Business and Professions
29 Code is repealed.

30 ~~7153.2. All registrations issued under the provisions of~~
31 ~~this article shall expire on a date established pursuant to~~
32 ~~Section 152.6.~~

33 SEC. 7. Section 7153.3 of the Business and Professions
34 Code is repealed.

35 ~~7153.3. (a) To renew a registration, the registrant~~
36 ~~shall before the time at which the registration would~~
37 ~~otherwise expire, apply for renewal on a form prescribed~~
38 ~~by the registrar and pay a renewal fee prescribed by this~~
39 ~~chapter.~~

~~(b) An application for renewal of registration is delinquent if the application is not postmarked by the date on which the registration would otherwise expire. A registration may, however, still be renewed at any time within three years after its expiration upon the filing of an application for renewal on a form prescribed by the registrar and the payment of the renewal fee prescribed by this chapter and a delinquent renewal penalty in the amount of twenty five dollars (\$25). If a registration is not renewed within three years, the person shall make application for registration pursuant to Section 7153.1.~~

~~(c) The registrar may refuse to renew a registration for failure by the registrant to complete the application for renewal of registration. If a registrant fails to return the application rejected for insufficiency or incompleteness within 90 days from the original date of rejection, the application and fee shall be deemed abandoned. Any application abandoned may not be reinstated. However, the person may file a new application for registration pursuant to Section 7153.1.~~

~~The registrar may review and accept the petition of a person who disputes the abandonment of his or her renewal application upon a showing of good cause. This petition shall be received within 90 days of the date the application for renewal is deemed abandoned.~~

~~SEC. 8. Section 7154 of the Business and Professions Code is repealed.~~

~~7154. A home improvement contractor who employs a person to sell home improvement contracts while such person is not registered by the registrar as a home improvement salesman as provided in this article, is subject to disciplinary action by the registrar.~~

~~SEC. 9. Section 7155 of the Business and Professions Code is repealed.~~

~~7155. Violation of any provision of this chapter by a home improvement salesman constitutes cause for disciplinary action. The registrar may suspend or revoke the registration of the home improvement salesman if he is found to be in violation. The disciplinary proceedings shall be conducted in accordance with the provisions of~~

~~Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

SEC. 10. Section 7155.5 of the Business and Professions Code is amended to read:

7155.5. Violations of any provisions of this chapter by a home improvement ~~salesman~~ *salesperson*, likewise constitutes a cause for disciplinary action against the contractor, whether or not he *or she* had knowledge of or participated in the act or omission constituting violations of this chapter.

SEC. 11. Section 7156 of the Business and Professions Code is amended to read:

7156. It shall be a misdemeanor ~~and a cause for disciplinary action~~ to commit any of the following acts:

(a) For any ~~salesman~~ *salesperson* to fail to account for or to remit to his *or her* employing contractor any payment received in connection with any home improvement transaction or any other transaction involving a work of improvement.

(b) For any person to use a contract form in connection with any home improvement transaction or any other transaction involving a work of improvement if ~~such~~ *the* form fails to disclose the name of the contractor principal by whom he *or she* is employed.

SEC. 12. Section 7157 of the Business and Professions Code is amended to read:

7157. (a) Except as otherwise provided in subdivision (b), as a part of or in connection with the inducement to enter into any home improvement contract or other contract, which may be performed by a contractor, no person ~~shall~~ *may* promise or offer to pay, credit, or allow to any owner, compensation or reward for the procurement or placing of home improvement business with others.

(b) A contractor or his *or her* agent or ~~salesman~~ *salesperson* may give tangible items to prospective customers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a contract for home improvement work if ~~such~~ *the* gift does

1 not exceed a value of five dollars (\$5) and only one such
2 gift is given in connection with any one transaction.

3 (c) No ~~salesman~~ *salesperson* or contractor's agent ~~shall~~
4 *may* accept any compensation of any kind, for or on
5 account of a home improvement transaction, or any other
6 transaction involving a work of improvement, from any
7 person other than the contractor whom he *or she*
8 represents with respect to the transaction, nor shall ~~such~~
9 ~~salesman~~ *the salesperson* or agent make any payment to
10 any person other than his *or her* employer on account of
11 ~~such~~ *the* sales transaction.

12 (d) No contractor shall pay, credit, or allow any
13 consideration or compensation of any kind to any other
14 contractor or ~~salesman~~ *salesperson* other than a licensee
15 for or on account of the performance of any work of
16 improvement or services, including, but not limited to,
17 home improvement work or services, except: (1) where
18 the person to or from whom the consideration is to be
19 paid is not subject to or is exempted from the licensing
20 requirements of this chapter, or (2) where the
21 transaction is not subject to the requirements of this
22 chapter.

23 As used in this section "owners" shall also mean
24 "tenant."

25 ~~Violation~~ *Commission* of any act prohibited by this
26 section is a misdemeanor and constitutes a cause for
27 disciplinary action.

28 SEC. 13. Section 7159 of the Business and Professions
29 Code is amended to read:

30 7159. This section ~~shall apply~~ *applies* only to home
31 improvement contracts, as defined in Section 7151.2,
32 between a contractor, whether a general contractor or a
33 specialty contractor, who is licensed or subject to be
34 licensed pursuant to this chapter with regard to the
35 transaction and who contracts with an owner or tenant
36 for work upon a residential building or structure, or upon
37 land adjacent thereto, for proposed repairing,
38 remodeling, altering, converting, modernizing, or adding
39 to the residential building or structure or land adjacent
40 thereto, and where the aggregate contract price specified



1 in one or more improvement contracts, including all
2 labor, services, and materials to be furnished by the
3 contractor, exceeds five hundred dollars (\$500).

4 Every home improvement contract and every
5 contract, the primary purpose of which is the
6 construction of a swimming pool, ~~shall be~~ is subject to ~~the~~
7 ~~provisions of~~ this section. Every contract and any changes
8 in the contract subject to ~~the provisions of~~ this section
9 shall be evidenced by a writing and shall be signed by all
10 the parties to the contract ~~thereto~~. The writing shall
11 contain all of the following:

12 (a) The name, address, and license number of the
13 contractor, and the name ~~and registration number~~ of any
14 salesperson who solicited or negotiated the contract.

15 (b) The approximate dates when the work will begin
16 and on which all construction is to be completed.

17 (c) A plan and scale drawing showing the shape, size,
18 dimensions, and construction and equipment
19 specifications for a swimming pool and for other home
20 improvements, a description of the work to be done and
21 description of the materials to be used and the equipment
22 to be used or installed, and the agreed consideration for
23 the work.

24 (d) If the payment schedule contained in the contract
25 provides for a downpayment to be paid to the contractor
26 by the owner or the tenant before the commencement of
27 work, the downpayment ~~shall~~ may not exceed two
28 hundred dollars (\$200) or 2 percent of the contract price
29 for swimming pools, or one thousand dollars (\$1,000) or
30 10 percent of the contract price for other home
31 improvements, excluding finance charges, whichever is
32 ~~the lesser~~ less.

33 (e) A schedule of payments showing the amount of
34 each payment as a sum in dollars and cents. In no event
35 ~~shall~~ may the payment schedule provide for the
36 contractor to receive, nor ~~shall~~ may the contractor
37 actually receive, payments in excess of 100 percent of the
38 value of the work performed on the project at any time,
39 excluding finance charges, except that the contractor
40 may receive an initial downpayment authorized by

1 subdivision (d). With respect to a swimming pool
2 contract, the final payment may be made at the
3 completion of the final plastering phase of construction,
4 provided that any installation or construction of
5 equipment, decking, or fencing required by the contract
6 is also completed. A failure by the contractor without
7 lawful excuse to substantially commence work within 20
8 days of the approximate date specified in the contract
9 when work will begin shall postpone the next succeeding
10 payment to the contractor for that period of time
11 equivalent to the time between when substantial
12 commencement was to have occurred and when it did
13 occur. The schedule of payments shall be stated in dollars
14 and cents, and shall be specifically referenced to the
15 amount of work or services to be performed and to any
16 materials and equipment to be supplied. With respect to
17 a contract that provides for a schedule of monthly
18 payments to be made by the owner or tenant and for a
19 schedule of payments to be disbursed to the contractor by
20 a person or entity to whom the contractor intends to
21 assign the right to receive the owner's or tenant's
22 monthly payments, the payments referred to in this
23 subdivision mean the payments to be disbursed by the
24 assignee and not those payments to be made by the owner
25 or tenant.

26 (f) A statement that, upon satisfactory payment being
27 made for any portion of the work performed, the
28 contractor shall, prior to any further payment being
29 made, furnish to the person contracting for the home
30 improvement or swimming pool a full and unconditional
31 release from any claim or mechanic's lien pursuant to
32 Section 3114 of the Civil Code for that portion of the work
33 for which payment has been made.

34 (g) The requirements set forth in subdivisions (d),
35 (e), and (f) ~~shall~~ do not apply when the contract provides
36 for the contractor to furnish a performance and payment
37 bond, lien and completion bond, bond equivalent, or joint
38 control approved by the ~~Registrar of Contractors~~
39 *registrar* covering full performance and completion of
40 the contract and the bonds or joint control is or are



1 furnished by the contractor, or when the parties agree for
2 full payment to be made upon or for a schedule of
3 payments to commence after satisfactory completion of
4 the project. The contract shall contain, in close proximity
5 to the signatures of the owner and contractor, a notice in
6 at least 10-point type stating that the owner or tenant has
7 the right to require the contractor to have a performance
8 and payment bond.

9 (h) No extra or change-order work ~~shall~~ *may* be
10 required to be performed without prior written
11 authorization of the person contracting for the
12 construction of the home improvement or swimming
13 pool. No change-order ~~shall be~~ *is* enforceable against the
14 person contracting for home improvement work or
15 swimming pool construction unless it clearly sets forth the
16 scope of work encompassed by the change-order and the
17 price to be charged for the changes. Any change-order
18 forms for changes or extra work shall be incorporated in,
19 and become a part of, the contract. Failure to comply
20 with the requirements of this subdivision ~~shall~~ *does* not
21 preclude the recovery of compensation for work
22 performed based upon quasi-contract, quantum meruit,
23 restitution, or other similar legal or equitable remedies
24 designed to prevent unjust enrichment.

25 (i) If the contract provides for a payment of a
26 salesperson's commission out of the contract price, that
27 payment shall be made on a pro rata basis in proportion
28 to the schedule of payments made to the contractor by
29 the disbursing party in accordance with subdivision (e).

30 (j) The language of the notice required pursuant to
31 Section 7018.5.

32 (k) What constitutes substantial commencement of
33 work pursuant to the contract.

34 (l) A notice that failure by the contractor without
35 lawful excuse to substantially commence work within 20
36 days from the approximate date specified in the contract
37 when work will begin is a violation of the Contractors'
38 State License Law.

1 (m) If the contract provides for a contractor to furnish
2 joint control, the contractor shall not have any financial
3 or other interest in the joint control.

4 A failure by the contractor without lawful excuse to
5 substantially commence work within 20 days from the
6 approximate date specified in the contract when work
7 will begin is a violation of this section.

8 This section ~~shall~~ *does* not ~~be construed to~~ prohibit the
9 parties to a home improvement contract from agreeing
10 to a contract or account subject to Chapter 1
11 (commencing with Section 1801) of Title 2 of Part 4 of
12 Division 3 of the Civil Code.

13 The writing may also contain other matters agreed to
14 by the parties to the contract.

15 The writing shall be legible and shall be in a form that
16 clearly describes any other document that is to be
17 incorporated into the contract. Before any work is done,
18 the owner shall be furnished a copy of the written
19 agreement, signed by the contractor.

20 For purposes of this section, the board shall, by
21 regulation, determine what constitutes “without lawful
22 excuse.”

23 The provisions of this section are not exclusive and do
24 not relieve the contractor or any contract subject to it
25 from compliance with all other applicable provisions of
26 law.

27 A violation of this section by a licensee, or a person
28 subject to be licensed, under this chapter, or by his or her
29 agent or salesperson, is a misdemeanor punishable by a
30 fine of not less than one hundred dollars (\$100) nor more
31 than five thousand dollars (\$5,000), or by imprisonment
32 in the county jail not exceeding one year, or by both that
33 fine and imprisonment.

34 (n) Any person who violates this section as part of a
35 plan or scheme to defraud an owner of a residential or
36 nonresidential structure, including a mobilehome or
37 manufactured home, in connection with the offer or
38 performance of repairs to the structure for damage
39 caused by a natural disaster, shall be ordered by the court
40 to make full restitution to the victim based on the person’s

1 ability to pay, as defined in subdivision (e) of Section
2 1203.1b of the Penal Code. In addition to full restitution,
3 and imprisonment authorized by this section, the court
4 may impose a fine of not less than five hundred dollars
5 (\$500) nor more than twenty-five thousand dollars
6 (\$25,000), based upon the defendant's ability to pay. This
7 subdivision applies to natural disasters for which a state
8 of emergency is proclaimed by the Governor pursuant to
9 Section 8625 of the Government Code or for which an
10 emergency or major disaster is declared by the President
11 of the United States.

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